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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,449	02/07/2002	Lukas Novotny	176/60921 (2-11150-912)	9533
7590 Gunnar G. Leinberg, Esq. NIXON PEABODY LLP Clinton Square P.O. Box 31051 Rochester, NY 14603-1051				
EXAMINER				
STAHL, MICHAEL J				
ART UNIT		PAPER NUMBER		
2874				
MAIL DATE		DELIVERY MODE		
08/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/068,449

Applicant(s)

NOVOTNY ET AL.

Examiner

MICHAEL STAHL

Art Unit

2874

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28, 31-38 and 40-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-28, 31-38 and 40-59 is/are allowed.
- 6) ☒ Claim(s) 60-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 20, 2008 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 60-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (US 5883988).

Claim 60: Yamamoto discloses a system (fig. 11) comprising: an elongated optical element **3**; at least one opaque structure **3B2** at least partially in a non-opaque portion of the optical element; and a source of light **13₂** positioned to propagate at least a portion of the light through the optical element in a direction generally parallel to a surface of the elongated optical element which faces an object (the object being for example the portion of absorption region **5** which is under electrode **8₂**), the opaque structure enhancing and directing the electric field of the light propagating through the optical element into a space outside the optical element **3** to interact with the object.

Claim 61: The act of providing the system described above with regard to claim 60 meets the recited steps.

Claims 62-63: The opaque structure **3B2** comprises a substantially solid structure (a solid metal coating **15** of non-zero thickness) between outer surfaces of the opaque structure.

Response to Arguments

The remarks regarding the previously applied Shimada reference are persuasive (element **8** is not opaque as now claimed), so the rejection based thereon is withdrawn.

The remarks regarding the Yamamoto reference are not persuasive. The remarks argue that in Yamamoto the beams are reflected internally within the optical element and not into a space outside the optical element. However, in the interpretation taken in the rejection the beams are focused to part of an absorption region **5**, which is outside of optical element **3**. **3** and **5** are distinct layers made of distinct materials. The language added to claims 60-61 has not been construed as requiring that the space outside the optical element is empty or a vacuum or a gas.

Allowable Subject Matter

Claims 1-28, 31-38, and 40-59 remain allowed as set forth in the last Office action (mailed November 27, 2007).

Conclusion

Inquiries about this letter may be directed to examiner Stahl at 571-272-2360. Inquiries of a general or clerical nature (e.g., a request for a missing form or paper, etc.) should be directed

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to the technical support staff supervisor at 571-272-1626. Official correspondence which is eligible for submission by facsimile and which pertains to this application may be faxed to 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions about the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Mike Stahl/
Examiner, Art Unit 2874

August 12, 2008